

Resolution No. 15-923  
Introduced: March 15, 2005  
Adopted: March 15, 2005

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND  
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION  
OF THE MARYLAND-WASHINGTON REGIONAL DISTRICT  
IN MONTGOMERY COUNTY**

---

By: County Council

**SUBJECT:** APPLICATION NO. G-828 FOR AMENDMENT TO THE ZONING ORDINANCE MAP,  
Steven Robins, Esquire, Attorney for Applicant Forest Glen Venture, LLC, OPINION  
AND RESOLUTION ON APPLICATION

Tax Account Nos: 1613-034-61654 and 1613-034-61643

**OPINION**

Local Map Amendment Application No. G-819, filed on August 24, 2004 by Applicant Forest Glen Venture, LLC, requests reclassification from the R-90 Zone (single-family residential) to the PD-15 Zone (Planned Development) of 31.78821 acres of land in the 13<sup>th</sup> Election District.<sup>1</sup> The Applicant was a contract purchaser when the application was submitted, but has since become the property owner.

The Hearing Examiner recommended approval of the application on the basis that (i) the submitted Development Plan satisfies all of the applicable requirements set forth in the Zoning Ordinance; and (ii) the proposed rezoning and development would satisfy the purposes and standards of the PD Zone, would be compatible with existing and planned land uses in the surrounding area and would serve the public interest. The Montgomery County Planning Board (the "Planning Board") and its Technical Staff provided similar recommendations. The District Council agrees with these conclusions, as discussed below, and incorporates the Hearing Examiner's Report and Recommendation herein by reference.

---

<sup>1</sup> The application initially identified the land proposed for rezoning as 31.9905 acres. The land proposed for rezoning was later revised slightly, based on the actual land transfer that took place during the pendency of the application. The final amount of land proposed for rezoning is 31.78821 acres.

### **A. Subject Property and Surrounding Area**

The subject property consists of approximately 32 acres of land in Silver Spring, made up of Parcel 1, containing 27.2 acres located north of Linden Lane, adjacent to Route I-495 (the "Beltway") and in close proximity to the CSX Railway, and Parcel 2, containing 4.78 acres located south of Linden Lane between its intersections with Stephen Sitter Lane and Woodstock Court. The Forest Glen Metrorail station is located less than one mile north of the property, and the Silver Spring Metrorail station is about four miles southeast of the site in downtown Silver Spring. Vehicular access to the site is available at several locations on Linden Lane.

The area comprising Parcel 1 has been designated a historic district on both the National Register of Historic Places ("National Register") and the Montgomery County Master Plan for Historic Preservation (the "County Preservation Plan"). This designation extends not only to the historic buildings on the site but also to the historic setting and landscape. Moreover, the entire 32-acre site is encompassed by a historic preservation easement for the benefit of the Maryland Historical Trust, which gives the Trust approval authority over all changes to existing buildings and the architectural design of new construction.

The portion of the subject property included in the historic district contains approximately 29 buildings in a campus-like setting, 23 of which (dating from 1887 to 1927) contribute to the historic character of the site. The main buildings are arranged in a wide arch atop a bluff that overlooks a 300-foot-wide wooded ravine and streambed known as the Glen. Additional buildings are located closer to Linden Lane and on the east side of the main campus. They were once joined by lawns, gardens and covered walkways, but are now mostly connected by asphalt roadways. The total built space contains about 375,000 square feet. The historic district also has decorative elements such as historic statues and a large fountain. All but one of the buildings are vacant, and most are in an advanced state of disrepair with leaking roofs, failed steam systems, broken pipes, and collapsing walls and floors. Many of the historic buildings have a significant amount of asbestos containing materials and lead paint which, due to water and steam damage, pose hazards to individuals entering the buildings.

The only building that is currently occupied is the stable, which is leased by Montgomery County and houses a transitional shelter for men operated by Catholic Charities. The building is approximately 11,000 square feet in size and accommodates 32 residents. This use is to be relocated on site in connection with the proposed development.

The subject property has striking topography that varies more than one hundred feet in elevation from the gently rolling upland hills to the steep stream valley. Approximately 13 acres of the property is forested, mostly within the Glen. Natural features include a rolling lawn in front of the main building with several significant old growth trees, and the Glen, which is part of a larger forest stand extending east and west of the site. The Glen was once a place for relaxation, with historic statues, paths, stairs and secluded seating areas. Today, after years without maintenance, it is overgrown and difficult to traverse.

Parcel 2 is almost entirely vacant, with only two structures, both small, single-family dwellings. A small tract of forested land in the southwest corner of Parcel 2 is part of a much larger forest stand extending to the west, contiguous with forest in the Rock Creek stream valley corridor.

The subject property abuts the Beltway to the north, to the east a salt dome and warehouse that belong to the Walter Reed Army Medical Center Annex ("Walter Reed Annex"), to the southeast the main portion of the Walter Reed Annex, to the southwest MNCPPC parkland that connects with Rock Creek Park, and to the west the residential neighborhood of Forest Glen Park.

The surrounding area for this application consists of the area identified in the *August 2000 Approved and Adopted North and West Silver Spring Master Plan* (the "Master Plan") as the Walter Reed Army Medical Center neighborhood, which extends roughly from the Beltway on the north to the CSX rail line on the east, Brookville Road on the southeast, Rock Creek on the southwest and Forest Glen Park on the northwest. The surrounding area contains a mix of uses. In addition to the residential uses, which are primarily single-family, detached dwellings, there is parkland, the institutional uses of the Walter Reed Annex and some uses that are industrial in nature, like Walter

Reed's salt storage facility and warehouse adjacent to the eastern boundary of the site. The surrounding area is classified primarily under the R-90 Zone.

### **B. Land Use and Zoning History**

The historic portion of the subject property, once a tobacco farm, was developed in 1887 as a railroad-era resort hotel known as Ye Forest Inn. The site changed hands in 1894, becoming a girls' finishing school known as the National Park Seminary. The main historic building was built in conjunction with the hotel in 1887. The front of the building faced the Glen, with the Forest Glen train station on the far side of the ravine (the Beltway, of course, did not exist at that time). Students at the Seminary reached the site by taking the train to the Forest Glen station and then walking to the site over a footbridge through the Glen. The Linden Lane perspective was historically the rear of the site, although today it is the primary access point.

Around the turn of the century, the directors of the Seminary began making additions to the original building and adding new buildings, including a series of sorority houses with international or cultural themes. In all, the Seminary had 20 fanciful structures including a Japanese pagoda, a stone castle, an Italianate villa and a Dutch windmill. These buildings, combined with classical statuary and natural and planned landscape, made the site a remarkable assemblage.

The Seminary operated until 1943, when the United States acquired the property via eminent domain under the War Powers Act. The site was used as a United States Army rehabilitation hospital for recovering veterans through the end of the Vietnam War. During that period, new buildings were added to the site and changes were made to existing buildings, apparently without regard to their historic character. Over time, the Army began contemplating other uses for the site that would have required demolishing the existing buildings. Community residents and preservationists organized in opposition, and succeeding in having the site placed on the National Register in 1972 and the County Preservation Plan in 1979, which prevented the Army from tearing the buildings down. The opposition was spearheaded by the citizens' group Save Our Seminary.

The Army used some of the buildings for research and office space for a time, then boarded them up and left them dormant and neglected. The buildings were subject to repeated acts of vandalism and theft, as well as damage from deferred maintenance, including major water damage from burst water pipes and leaking roofs. At this point, the historic buildings are severely damaged, and many appear to be on the brink of collapse.

After the Army decided to treat the site as surplus property, Montgomery County entered into an agreement with the federal General Services Administration ("GSA"), in early 2003, to acquire the subject property. The County issued a Request for Proposals, with input from Save Our Seminary, in May 2003. In December 2003 the County selected the current development team, which pairs The Alexander Company, a firm with extensive experience in the adaptive use of historic structures, with Eakin Youngentob Associates, Inc. ("Eakin"), a local company that has expertise in new home construction and the Montgomery County real estate market. In October 2004, the GSA transferred ownership of the subject property to Montgomery County. The County imposed the Maryland Historical Trust preservation easement on the property, then immediately transferred title to the Applicant, a joint venture between The Alexander Company and Eakin.

The subject property was mapped "A," one-family residential, on the original zoning map adopted in 1928. This zoning was reconfirmed on a 1941 zoning map. In 1954, the site was re-mapped to the R-90 Zone. This zoning was confirmed by sectional map amendment in 1989 (SMA G-642), 1997 (G-744), 1998 (SMA G-761) and 2001 (SMA G-787).

### **C. Proposed Development**

The Applicant proposes to comprehensively redevelop the subject property and create a residential community with a maximum of 280 dwelling units, plus the transitional men's shelter.

The preliminary breakdown of unit types is as follows:

Multi-family units	169
Townhouse units	98
Single-family detached units	<u>13</u>
Total	280

The 280 units will be a combination of adaptive reuse of historic structures and construction of new homes. Adaptive re-use of historic structures will restore the exteriors to their historic appearances while renovating the interiors in a manner that respects the historic fabric, but gives residents the experience of living in a new building. A minimum of 20 percent of the units will be affordable, substantially exceeding the County's requirement for Moderately Priced Dwelling Units ("MPDUs"). These will be rental units located in the main historic building.<sup>2</sup> The preliminary breakdown between adaptive reuse and new construction is described below:

- Approximately 96 one- and two-bedroom apartments in the main historic building.
- Ten historic buildings to be renovated into about 70 condominium units.
- Thirteen free-standing buildings, at least 12 of them historic, to be renovated and sold as single-family detached homes. (These include the more fanciful buildings such as the pagoda, the villa, the castle and the windmill.)
- Approximately 39 new townhouses south of Linden Lane; 51 within the historic district, on land that is currently undeveloped or is occupied by structures that do not contribute to the historic district and are scheduled for demolition; and eight in a cluster near the northeast corner of the site, accessed via Smith Road.

The development is planned to proceed in two phases. Phase One will include the bulk of the units, approximately 257 in total. Phase Two will be limited to approximately 14 multi-family units in the villa, one single-family dwelling in the castle and the eight townhouses on Smith Road, a total of 23 units. These units are planned as a second phase because they are located on the far side of the Glen, presenting unique challenges for vehicular access and utilities.

In addition to the 280 dwelling units, the Development Plan allocates space within the main historic building for the transitional men's shelter. It provides for the renovation of the ballroom in the main building, which is to be accessible to the public on a limited basis. It also provides for extensive renovation of the grounds, recognizing that the natural environment is an integral component

---

<sup>2</sup> The Applicant reports that the Montgomery County Department of Housing and Community Affairs has approved this arrangement.

of this development. Landscaping work will including clearing invasive species that now dominate the Glen, replacing them with new native plantings, adding ornamental plantings in the upland areas of the site consistent with the historic landscaping, and renovating and relocating historic statuary that once were found throughout the site.

An extensive pedestrian circulation network is planned, including a historic interpretive trail, open to the public, that will connect the parkland southwest of the site with the Glen. The trail is being designed with help from Save Our Seminary so as to facilitate both formal and self-guided tours of the site. One key element will be a new trailhead for hikers and bikers that will access a historic connection to Rock Creek. This will serve as an amenity for residents of the site and its neighbors.

The record contains extensive evidence concerning architectural designs. The preservation easement requires that the exteriors of the historic buildings be restored to look very much as they did during the appropriate historical era. For new construction, the Applicant has carefully selected the building types and architectural styles to achieve maximum compatibility with the historic district and the surrounding area. South of Linden Lane, the Applicant looked to the residential neighborhoods in the surrounding area for architectural inspiration, incorporating architectural elements such as front porches and colonial building materials into the designs. The two unit types developed are a 32-foot-wide, two-story "courtyard home" and a 24-foot-wide townhouse with three to four stories. Testimony indicated that the new construction is likely to attract two primary demographic groups: "empty nesters," i.e., couples whose grown children have left the home, who often prefer two-level courtyard homes, and singles or young couples who enjoy townhouse living.

#### **D. Development Plan**

The Development Plan in the present cases includes each of the elements required under Code § 59-D-1.3, including a land use plan showing site access, approximate locations of existing and proposed buildings and structures, parking areas, and intended right-of-way dedications, and describing areas of the site that will be open to the public. The Land Use Plan also describes the

preservation easement held by the Maryland Historical Trust, identifying where it may be found in county land records.

Additional elements of the Development Plan have been submitted through extensive exhibits, including a vicinity map (Ex. 38(b)), a Natural Resources Inventory/Forest Stand Delineation ("NRI/FSD," Ex. 6), a roadway exhibit showing planned road improvements (Ex.55), a circulation plan (Ex. 38(e)), and a pedestrian network plan (Ex. 58).

The Land Use Plan specifies that locations of buildings, parking areas and utilities are approximate, with final locations to be determined during site plan review. Unit types are identified as small, medium or large townhouses and adaptive reuse buildings, with a notation that buildings identified for adaptive reuse will be reused if feasible, and otherwise, new construction will be substituted substantially within the existing building footprint. The Land Use Plan specifies that the exact number of parking spaces, final unit and bedroom count and amount of green space provided will be determined during site plan review.

The Land Use Plan contains five textual binding elements, which limit the number of residential units to 280; provide for two phases of construction, with the flexibility to shift units between phases; commit the Applicant to placing a conservation easement on the Glen; require the construction of a historic interpretative trail that is open to the public during daylight hours; and specify that at least 20 percent of the units will be designated as affordable housing according to applicable government codes. These binding elements are reproduced in full on the next page.

#### **E. Master Plan**

The Master Plan specifically addresses the subject property because of its historic status and the deteriorated condition of the existing buildings. When the Master Plan was adopted in 2000, the Army and the GSA were actively working to transfer the property to another government agency or a private entity. The Master Plan's first recommendation was that a minor master plan amendment should be prepared if the proposed reuse cannot be accommodated by the existing R-90 zoning.



## BINDING ELEMENTS:

1. DEVELOPMENT SHALL BE LIMITED TO A MAXIMUM OF 280 UNITS (NOT INCLUDING TRANSITIONAL HOUSING UNITS TO BE RELOCATED FOR CATHOLIC CHARITIES).

2. THE DEVELOPMENT SHALL BE CONSTRUCTED IN TWO PHASES AS SHOWN ON THE DEVELOPMENT PLAN. THE DEVELOPMENT MAY PROCEED IN A MANNER THAT PERMITS THE APPLICANT TO ADJUST THE PLANNED SEQUENCE OF CONSTRUCTION. FURTHERMORE, AT SITE PLAN, THE NUMBER OF RESIDENTIAL UNITS IN EACH PHASE, PARCEL OR BUILDINGS MAY BE SHIFTED BETWEEN PHASES, PARCELS OR BUILDINGS AS LONG AS THE TOTAL NUMBER OF UNITS DOES NOT EXCEED 280 (NOT INCLUDING THE TRANSITIONAL HOUSING UNITS).

3. DURING THE DEVELOPMENT PROCESS, AND AS PART OF THE FINAL FOREST CONSERVATION PLAN, THE APPLICANT (OR ITS SUCCESSORS OR ASSIGNS) SHALL FINALIZE AND AGREE TO RECORD AS PART OF THE RECORD PLATS FOR EACH OF THE DEVELOPMENT PHASES, CONSERVATION EASEMENTS OVER THE GLEN (THE "CONSERVATION EASEMENT AREAS"). THESE CONSERVATION EASEMENT AREAS ARE TO REMAIN UNDISTURBED IN THEIR NATURAL WOODED STATE, IN PERPETUITY, EXCEPT FOR THE CONSTRUCTION AND/OR MAINTENANCE OF STABILIZED STORMWATER OUTFALL SYSTEM(S), SEWER LINES AND OTHER UTILITY CONNECTIONS, WHICH, AFTER CONSTRUCTION AND/OR MAINTENANCE ACTIVITIES ARE COMPLETED, SHALL BE ALLOWED TO REVERT NATURALLY TO THEIR WOODED CONDITIONS. THE APPLICANT ALSO SHALL BE PERMITTED TO CONSTRUCT TRAILS AND WALKWAYS IN THE CONSERVATION EASEMENT AREAS AND CONDUCT OTHER ACTIVITIES WITHIN THE CONSERVATION EASEMENT AREAS, INCLUDING THE REMOVAL OF INVASIVE SPECIES, IF APPROVED AS PART OF THE SITE PLAN APPROVAL PROCESS.

4. THE APPLICANT SHALL CONSTRUCT A HISTORIC INTERPRETATIVE TRAIL THAT CONNECTS THE M-NCPPC OWNED "SVU 2", WHICH ADJOINS ROCK CREEK PARK, TO THE GLEN. THE APPLICANT SHALL FURTHER REFINE THIS HISTORIC INTERPRETATIVE TRAIL, INCLUDING ITS DESIGN AND LOCATION, AS PART OF THE SITE PLAN APPROVAL PROCESS. THIS HISTORIC INTERPRETATIVE TRAIL SHALL BE OPEN TO THE GENERAL PUBLIC DURING DAYLIGHT HOURS.

5. A MINIMUM OF 20% OF THE UNITS TO BE CONSTRUCTED SHALL BE DESIGNATED AS AFFORDABLE HOUSING UNITS PURSUANT TO APPLICABLE GOVERNMENTAL CODE PROVISIONS, RULES AND REGULATIONS. THE FINAL NUMBER OF AFFORDABLE UNITS SHALL BE DETERMINED AT SITE PLAN, BASED ON THE FINAL UNIT COUNT FOR THE ENTIRE DEVELOPMENT.

Master Plan at 40. That recommendation noted that a minor master plan amendment would allow for limited modification to the Master Plan “to respond to changing community conditions or for occasional clarification of recommendations.” Master Plan at 42. In addition, the text of that recommendation contemplates the possibility that development may proceed without a minor master plan amendment – the final sentence introduces six guidelines that “should serve as the basis for the minor master plan amendment or for development, should it proceed without an amendment.” *Id.*

The District Council finds that a minor master plan amendment is neither required under the Master Plan nor warranted in this case. There is no evidence of changed community conditions or a need to clarify the Master Plan’s recommendations. Moreover, the approval process for the PD Zone has provided an opportunity for Council oversight and analysis that is similar to a minor master plan amendment, and has afforded interested parties an adequate opportunity to comment and participate. Finally, it must be recognized that the additional time needed to process a minor master plan amendment could jeopardize the success of the redevelopment, in light of the rapidly deteriorating historic buildings.

The Master Plan’s six guidelines for reuse of the subject property are set forth below:

- (1) Maintain and restore the district’s historic integrity, including the buildings, relationships between the buildings, and the character of the open space.**

If the property is subdivided into private lots, those lots should be situated to accommodate planned uses and supporting activities (parking, loading, and access) while meeting other development guidelines.

- (2) Limit impacts on environmentally sensitive areas and provide for private conservation easements or public ownership.**
- (3) Consider, where compatible with the proposed use(s), the ability to allow access (either public or for-fee) to buildings with public or quasi-public uses such as the Ballroom, the Chapel, and the Pagoda.**
- (4) Minimize traffic impacts on surrounding neighborhoods and roadways primarily through low-traffic-generating uses.**
- (5) Minimize noise, light, and other environmental impacts on the surrounding residential neighborhoods.**
- (6) Provide trail connections as recommended in this Plan.**

The District Council finds that the rezoning and development proposed in this case conform to the Master Plan. Maintaining and restoring the historic district's integrity permeates virtually every aspect of the Development Plan, including the adaptive reuse of all the historic structures that are physically able to be saved; the extensive clean-up and renewal of the outdoor environment, both natural and landscaped; and the architectural design of new construction in the historic district to complement existing historic structures. The importance of preserving historic integrity is underscored by the historic preservation easement that the County placed on the site before transferring title to the Applicant. This easement will require approval from the Maryland Historical Trust for all changes to historic buildings and the architectural design of new ones, providing very strong assurances that the redevelopment will respect the historic importance of the site.

The proposed development will limit impacts on environmentally sensitive areas by reusing existing structures and building footprints, and by concentrating new construction away from the stream buffer and forest stands. Moreover, a binding element requires imposition of a conservation easement to protect the Glen in perpetuity.

The Applicant proposes to make the ballroom available for public use, although the pagoda and the chapel are slated for use as private homes. The Master Plan guideline on this point is written in permissive language, suggesting that public access be considered "where compatible with the proposed use." Master Plan at 42. Thus, the decision to reserve the pagoda and the chapel for private use does not constitute failure to comply with this guideline.

The opinions of Technical Staff and the Applicant's transportation planner constitute substantial, probative evidence that the proposed residential uses are consistent with the Master Plan recommendation for low-traffic-generating uses.

Finally, the residential character of the proposed development ensures that noise, light and other impacts on the surrounding area will be moderate. Moreover, the site abuts and confronts non-residential uses on three sides, decreasing dramatically the number of homes that could be affected.

### **F. Environmental Impacts and Stormwater Management**

The subject property has two primary forest stands: approximately 12 acres on the north side of the property, mostly in the Glen, and about half an acre in the southwest corner of the site, adjacent to MNCPPC parkland. A proposed Forest Conservation Plan (Exhibit 54) shows the retention of approximately 9.2 acres of forest, which exceeds the requirement under the County's forest conservation law. Accordingly, no afforestation or reforestation will be required. Moreover, the Applicant is not seeking forest conservation credit for proposed landscaping, or for forested areas that will be temporarily disturbed for the installation of utilities and then allowed to revert to forest.

Technical Staff notes that a Category I Forest Conservation Easement will be required for any forest that is credited for forest conservation, and that trails in such areas must be natural surface rather than paved. Environmental Staff at the MNCPPC identified undesirable environmental impacts at three locations on the Land Use Plan, which Staff recommends be addressed during site plan review.

Because of the age of the development, the subject property does not currently have storm water controls. The Applicant has submitted a storm water concept plan to the Department of Permitting Services and will comply with all applicable standards. The Applicant's engineer testified that while the proposed development will increase the amount of impervious area on the site from about 9.5 acres to about 13.7 acres, with modern storm water management controls, the net effect will be to improve the quality of run-off, decrease its quantity and make some stream channel improvements.

### **G. Public Facilities**

The Applicant performed a traffic study in compliance with the requirements of Local Area Transportation Review ("LATR"). With 280 units, the proposed development is expected to generate a total of 135 and 202 additional peak hour trips during the morning and evening weekday peak periods, respectively. The traffic study concluded, and Technical Staff agreed, that with the proposed development in place, critical lane volumes ("CLVs") at the key intersections studied would remain well below the CLV standard of 1,600 for the Silver Spring/Takoma Park Policy Area, and the

relevant intersections will operate at an acceptable level of service ("LOS") of C or better in both the morning and evening peak hours. The Applicant also performed a traffic signal study at the intersection of Linden Lane and Brookville Road, concluding that a traffic signal is warranted, even without the development of this project.

The present application enjoys widespread community support and minimal opposition. The only concern raised by supporters in the community is traffic safety. Linden Lane is a narrow, uneven road with no curb, sidewalks or shoulders in the vicinity of the subject property, and neighbors feel that the traffic goes too fast. The Seminary Advisory Board (a coalition of citizen's groups formed to work with the Applicant during the present development process) has suggested that the Applicant be required to mitigate traffic, and that the County appoint a transportation coordinator and establish a new Ride-On Bus route. The Seminary Advisory Board also seeks traffic calming elements on Linden Lane to reduce speed, unsafe driving practices and cut-through traffic.

The Applicant proposes extensive improvements to Linden Lane, including modest widening, the addition of sidewalks and the installation of curb and gutter. Where the location of historic buildings prevents the right-of-way from being widened to accommodate sidewalks, the sidewalk will extend into the site, between buildings, and connect back up with Linden Lane where the right-of-way is wider. The new sidewalks will, among other things, provide easier pedestrian access to the Metro. The District Council agrees with the conclusion drawn by the Hearing Examiner, Technical Staff and the Applicant's transportation expert that, taking into consideration both the additional vehicle trips expected and the proposed improvements, the net effect on traffic conditions in the surrounding area will be beneficial.

The subject property is served by public water and sewer from existing public rights-of-way and public utility services. These services will be available to the proposed development through extensions and relocations of the existing lines abutting the property.

The subject property is within the service areas of Woodlin Elementary School and Sligo Middle School. At the high school level, the site is in the base area for Albert Einstein High School, but

students will be able to attend any of the five high schools in the Downcounty Consortium. Based on the preliminary unit mix, Montgomery County Public Schools ("MCPS") expects the proposed development to generate approximately 43 elementary, 22 middle and 23 high school students. There was evidence to suggest that the new construction will tend to attract single or couples without school-age children, so these numbers may be somewhat high.

MCPS reports that based on their program-based capacity calculations, enrollment at Woodlin Elementary School is projected to exceed capacity throughout the six-year forecast period by about 20 to 25 students. No additions are currently planned. Sligo Middle and Albert Einstein High School are projected to remain within capacity for the forecast period. The other high schools in the consortium are expected to be within capacity in the next few years and stay within capacity thereafter, although trends in student choices among the schools are just developing.

The school capacity test under the AGP finds capacity adequate in all clusters for purposes of subdivision review in FY 2005. The methodology behind the AGP capacity calculations, which differs from the methodology used by MCPS, represents the County Council's judgment as to an appropriate means to assess whether school capacity is adequate to support residential development. In light of this, as well as evidence that the unit types proposed in this case may attract fewer school-age children than MCPS estimates, and strong evidence that the proposed rezoning and development will serve the larger public interest, the District Council considers the evidence of potential adverse effects on school overcrowding to be insufficient to warrant denial of the requested rezoning.

#### **H. Community Support**

The present application has the support of a number of civic groups and governmental organizations. Save Our Seminary ("SOS"), the civic group that has spent many years searching for a new, economically viable use for the subject property, fully supports the present application and the Development Plan, finding that it will be very compatible with the surrounding area.

The Montgomery County Historic Preservation Commission ("HPC") supports the application because the rezoning is necessary to allow enough new residential construction to finance

rehabilitation of the historic buildings, and the proposed development is sensitive to the historic context, the environment and the adjacent neighborhood.

The Office of the County Executive recommends approval of the present application, noting that the Department of Health and Human Services supports the project because of the commitment to relocate the transitional housing on site, and that the Department of Public Works and Transportation is keenly aware of existing circulation and cut-through traffic problems, has taken steps to alleviate those problems, and will continue to work with the community and, as necessary, the developer of the subject property to address those concerns.

### **I. Development Plan Findings**

The District Council finds that the Development Plan submitted with this application satisfies all the requirements for a development plan under Code §59-D-1.61(a)-(e). Each of the required findings is addressed below.

**§59-D-1.61(a): master plan consistency.** The purpose clause for the PD Zone establishes consistency with the master plan as an important factor in applying the zone:

It is the purpose of this zone to implement the general plan for the Maryland-Washington Regional district and the area master plans by permitting unified development consistent with densities proposed by master plans. . . . it is intended that the zoning category be utilized to implement the general plan, area master plans and other pertinent county policies in a manner and to a degree more closely compatible with said county plans and policies than may be possible under other zoning categories.

Code § 59-C-7.11.

As discussed in Part E. above, the District Council agrees with the conclusion reached by the Hearing Examiner, the Planning Board, Technical Staff and the Applicant's experts that the rezoning and development proposed here substantially comply not only with the use and density indicated by the Master Plan, but with the Master Plan as a whole. The evidence supports the conclusion that the Development Plan does not conflict with any other county plans or policies, or with the capital improvement program. It will further county housing policy by creating diverse housing options, including affordable housing, and will be consistent with the Annual Growth Policy.

**§59-D-1.61(b): purposes, standards and regulations of the zone; safety, convenience and amenity of residents; and compatibility with adjacent development.**

**1. Purpose Clause**

The purpose clause for the PD Zone contains a number of goals and objectives, all of which are satisfied by this application. The District Council's findings as to each paragraph of the purpose clause are set forth below.

First paragraph: Master Plan implementation. As discussed under §59-D-1.61(a) above, the proposed development would be in substantial compliance with the applicable Master Plan. Moreover, testimony from several witnesses demonstrated that the proposed development would allow a higher degree of compliance with the Master Plan than development under the existing zoning. The Applicant presented the testimony of two land planners, plus a project manager with extensive experience in identifying appropriate zoning for the restoration of historic sites, all of whom opined that the flexibility of the PD Zone makes restoration of the site's historic integrity possible. For example, the main historic building exceeds the maximum height for the existing R-90 Zone, but is permitted under the PD-15 Zone. The PD Zone also permits a flexibility in site design that will facilitate adaptive reuse of existing structures and the design of new construction to complement the historic buildings. Moreover, as stated by Technical Staff, "residential development is a reuse strategy that is mutually compatible with the existing neighborhood and the optimum land use given existing and proposed facilities." Ex. 39 at 11.

Second paragraph: social and community interaction, distinctive visual character, balanced mix of uses. As Technical Staff and the Applicant's land planners found, the proposed development will achieve these objectives in several ways. The development will unquestionably have a distinctive visual character because of the historic nature of the site and the eclectic architectural styles represented. The residential community will be defined by its relationship with the historic site. An extensive network of pedestrian sidewalks and trails will invite residents of the site and the surrounding area to enjoy the outdoor site amenities, as well as public use of the ballroom, all of which will facilitate social and



community interaction. The proposed development does not include any non-residential land uses, but will have a mix of residential use types.

Third paragraph: broad range of housing types. The proposed development will provide a broad range of housing types, including historic condominiums and apartments, unique, historic single-family homes, and new townhouses. Housing options will appeal to diverse residents including young service workers looking for affordable rental units, first-time home buyers looking for condominium units or townhouses, and empty-nesters trying to downsize without the multi-level living of townhouses. The development will broaden the mix of housing types in the surrounding area, which contains primarily single-family dwellings and institutional uses.

Fourth paragraph: trees and grading. The proposed development will minimize grading by reusing existing structures and building footprints to the maximum extent possible. A binding element requires a conservation easement to be placed on the Glen, which will protect the stream valley and most of the forest on site in perpetuity. Approximately nine of the 13 acres of forest currently existing on the site will be preserved, substantially exceeding county forest conservation requirements.

Fifth paragraph: open space. The Development Plan makes use of open space in a variety of ways. These include public open spaces that will be conveniently located for residents of both the subject property and the surrounding area. The interpretive trail and improvements to the trail system in the Glen will provide better access to the historic district and the Glen itself than is currently available. Open space will also include private and semi-private outdoor spaces for residents. Improvements to the trail head in the southwest corner of the site will allow better access for all area residents to the adjacent MNCPPC parkland.

Sixth paragraph: pedestrian networks. Pedestrian activity will be encouraged by an extensive network of pedestrian sidewalks and trails that will link the various areas of the subject property with one another and the surrounding area, and by the streetscape design for the new neighborhood south of Linden Lane, with its emphasis on front porches and rear vehicular access.

Seventh paragraph: scale. The PD Zone encourages, but does not require, development on a large scale. The Development Plan provides for up to 280 dwelling units on 32 acres, consistent with the size contemplated for the zone.

Eighth paragraph, first part: safety, convenience and amenity. The Applicant presented extensive evidence that the proposed development will provide a safe and convenient residential community, with improved vehicular and pedestrian safety and convenience for the surrounding area as a whole. Improvements to Linden Lane will create a safer roadway, and may decrease high-speed and cut-through traffic. Sidewalks along the site's main Linden Lane frontage, and extending into the site where historic structures are very close to the road, will provide easier pedestrian access to the Metro. In addition, rehabilitation of the historic structures will remove currently unsafe conditions caused by the rapidly deteriorating buildings.

The proposed development will provide significant amenities for residents of the site and the surrounding area by making the historic district, the Glen and the ballroom more accessible to the public. Substantial open space, both natural and landscaped, as well as the restoration of historic statuary, will provide additional amenities for residents and visitors to the site. Moreover, the opportunity to live in a refurbished historic building will itself be a benefit for new residents who choose that option.

Eighth paragraph, second part: compatibility. The District Council finds that the evidence demonstrates overwhelmingly that the proposed reclassification and development will be compatible with the surrounding area. Implementation of the Development Plan will permit the restoration and reuse of a site that has long lain dormant, and has become increasingly unsafe. The District Council is persuaded by Technical Staff's opinion that compliance with the Master Plan's very specific guidelines for the subject property demonstrates compatibility with surrounding land uses. Moreover, as the Applicant's land planners stated, the housing types and densities proposed, their setbacks, their scale and massing, plus the connectivity and character of the development, make it very compatible with the surrounding area.

The District Council also notes that the subject property abuts or confronts the Beltway and institutional uses on three sides. The only residential uses on the subject property that directly confront

other residential uses will be single-family detached homes facing other single-family detached homes. The architectural styles will not necessarily be similar, because some of the existing historic structures that will be converted for use as single-family homes have an international or cultural flavor unlike the housing styles in the surrounding area. These historic buildings pre-date the rest of the neighborhood, however, and are part of its architectural fabric.

Finally, the District Council agrees with Technical Staff that the proposed Land Use Plan shows internal compatibility. The Applicant has presented a balanced, harmonious plan for the reuse of a complicated site that shows sensitivity to historic and natural resources, and will create a residential community with a mix of housing types unified by careful site design, a high degree of vehicular and pedestrian connectivity, and extensive landscape features.

Ninth paragraph: three findings. The purpose clause states that the PD Zone "is in the nature of a special exception," and shall be approved or disapproved based on three findings:

- (1) the application is or is not proper for the comprehensive and systematic development of the county;
- (2) the application is or is not capable of accomplishing the purposes of this zone; and
- (3) the application is or is not in substantial compliance with the duly approved and adopted general plan and master plans.

This element underscores the District Council's responsibility to carefully consider whether the PD Zone would be appropriate in the location for which it is requested. Based on the preponderance of the evidence and for the reasons stated above, the District Council concludes that the present application is proper for the comprehensive and systematic development of the County, in compliance with and capable of accomplishing the purposes of the zone, and in substantial compliance with the General Plan and Master Plan.

## **2. Standards and Regulations of the Zone**

The standards and regulations of the PD-15 Zone are summarized below, together with the grounds for the District Council's conclusion that the proposed development would satisfy each of these requirements.

Section 59-C-7.121, Master Plan Density. Pursuant to Code §59-C-7.121, “no land can be classified in the planned development zone unless such land is within an area for which there is an existing, duly adopted master plan which shows such land for a density of 2 dwelling units per acre or higher.” The subject property is recommended in the Master Plan (and classified under) the R-90 Zone, which provides for development at a density greater than two dwelling units per acre.

Section 59-C-7.122, Minimum Area. Code §59-C-7.122 specifies several criteria, any one of which may be satisfied to qualify land for reclassification to the PD Zone. The subject application satisfies the first of these criteria, which requires that the land contain sufficient gross area to construct 50 or more dwelling units under the density category to be granted. That standard clearly is met here, where the Land Use Plan provides for up to 280 units. The application also satisfies the third of these criteria, which provides that the PD Zone may be applied where it would result in the preservation of a historic structure or site. As noted earlier, historic preservation lies at the core of the proposed development.

Section 59-C-7.131, Residential Uses. Pursuant to Code §59-C-7.131, all types of residential uses are permitted, but parameters are established for the unit mix. A development in the PD-15 Zone with 200 to 800 units is required to have a minimum of 10 percent single-family detached and townhouse units, plus a minimum of 25 percent and maximum of 75 percent multi-family units (with a maximum of 30 percent over four stories). No minimum or maximum percentages apply to single-family detached dwellings. The preliminary unit mix shown on the Land Use Plan in this case provides for 5 percent single-family detached units, 32 percent townhouses, 49 percent multi-family four stories and under, and 11 percent multi-family over four stories. Thus, it is clear that these requirements can be met.

Section 59-C-7.132, Commercial Uses. Commercial uses are permitted but, as testified by Technical Staff, not required under the PD Zone. Parameters established for commercial uses are not applicable to the subject application, which is limited to residential uses.

Section 59-C-7.133, Other Uses. Noncommercial community recreational facilities for the use of residents, such as the common open space and community recreation areas shown on the Development Plan (see esp. Proposed Recreation Program, Ex. 57) are permitted in the PD Zone.

Section 59-C-7.14, Density of Residential Development. The Zoning Ordinance provides the following direction for the District Council in considering a request for the PD Zone (§ 59-C-7.14(b)):

The District Council must determine whether the density category applied for is appropriate, taking into consideration and being guided by the general plan, the area master or sector plan, . . . the purposes of the planned development zone, the requirement to provide [MPDUs], and such other information as may be relevant.

By binding element, the present application limits itself to approximately 8.8 dwelling units per acre, far below the 15 units per acre permitted in the PD-15 Zone. The density category requested is appropriate because it is necessary to make the main historic building, which in part exceeds four stories, a permitted use. Moreover, the proposed development fully complies with the purposes of the PD Zone and with the Master Plan, and will provide a guaranteed minimum of 20 percent affordable units. The evidence indicates strongly that application of the PD Zone at this location is necessary to allow the preservation and adaptive reuse of this important historic site to go forward. For all of these reasons, the District Council concludes that the density category requested is appropriate.

Section 59-C-7.15, Compatibility. As discussed above, the District Council finds that the proposed development would be compatible with existing development in the surrounding area. The application does not, however satisfy specific setback and building height provisions that are designed to promote compatibility. Section 59-C-7.15 of the Zoning Ordinance states that where land classified under the PD Zone adjoins land for which the area master plan recommends a one-family detached zone, no building other than a one-family detached residence may be constructed within 100 feet of such adjoining land, and no building may be constructed at a height greater than its distance from such adjoining land.

The Zoning Ordinance authorizes the Planning Board to waive the setback and building height standards of the PD Zone, at site plan, where necessary to facilitate the redevelopment of a

designated historic district, provided that the adjoining property will not be adversely affected and that building heights do not exceed 50 feet. The Planning Board's recommendation in this matter indicated support for the requested waivers.

Roughly 50 units, comprising about half of the proposed new units south of Linden Lane and a fair number of units in the historic district, are planned for locations and heights that would violate the setback and height restrictions. None would exceed 50 feet in height. Testimony established that denial of the waiver would have a tremendous impact on the project, and could prevent it from going forward. Moreover, virtually all of the affected buildings abut land that is recommended and zoned for residential use, but is used as parkland or part of the Walter Reed Annex. Only a handful of units that violate the setback and height standards will be in close proximity to single-family homes, and the homes they are close to are part of the proposed development.

Under these circumstances, the District Council is in agreement with the Hearing Examiner and Technical Staff that the requested waivers will facilitate the redevelopment of the historic district, without material adverse effects on adjoining property, and therefore are appropriate.

Section 59-C-7.16, Green Area. The PD-15 Zone requires a minimum of 50 percent green area. The proposed Land Use Plan provides for green space approaching 60 percent of the site, in excess of the statutory requirement. This was not established as a binding element in order to preserve flexibility during site plan review, but the evidence easily establishes that the 50 percent requirement can be met.

Section 59-C-7.17, Dedication of Land for Public Use. The Master Plan does not require any dedications in connection with redevelopment of the subject property. Nonetheless, the Applicant has agreed to dedicate land needed to widen and improve Linden Lane for safety purposes.

Section 59-C-7.18, Parking Facilities. Off-street parking must be provided in accordance with the requirements of Article 59-E of the Zoning Ordinance. The Land Use Plan currently shows 535 parking spaces, about 30 spaces more than the Zoning Ordinance would require for the preliminary

unit mix. The final parking requirement will depend on the final unit mix, and the Applicant will provide at least the minimum required.

The final two elements of finding (b), the maximum safety, convenience and amenity of the residents, and compatibility, have already been addressed.

**§59-D-1.61(c): safe, adequate and efficient internal vehicular and pedestrian circulation systems.** The evidence supports a finding that the proposed internal vehicular and pedestrian circulation systems and points of external access are safe, adequate, and efficient. The internal circulation system will provide extensive vehicular and pedestrian access, and proposed improvements to Linden Lane will increase vehicular and pedestrian safety. In addition, improved sidewalks and trails will provide better access, for residents of the site and the surrounding area, to the Metro, the Glen and other areas of the historic district, and adjacent parkland.

**§59-D-1.61(d): preservation of natural features.** The proposed development would tend to prevent erosion of the soil and preserve natural vegetation and other natural features of the site by reusing existing buildings and building footprints. New construction will accommodate existing topography by using English basements in some units and construction on slab for others, as appropriate. The principal natural features of the site will be preserved by a conservation easement over the historic Glen (required by binding element) and by on-site compliance with forest conservation requirements. The Applicant has submitted a storm water concept plan and will adhere to applicable County standards.

**§59-D-1.61(e): common area maintenance.** The Applicant has provided a summary of the planned homeowners' association structure indicating that a single homeowners' association covering the entire development will be responsible for perpetual maintenance of common and quasi-public areas. See Ex. 50.

## **J. Public Interest**

The District Council further concludes that the proposed zoning bears sufficient relationship to the public interest to justify its approval. When evaluating the public interest, the District

Council normally considers master plan conformity, the recommendations of the Planning Board and Technical Staff, and any adverse impact on public facilities. As discussed above, the District Council finds that the subject application substantially complies with the applicable Master Plan.

The evidence demonstrates that the increase in traffic volume associated with the proposed development will not lead to unacceptable levels of congestion. Moreover, considering the proposed roadway improvements, the evidence supports a conclusion that the proposed development will, on balance, have a beneficial impact on local roadway conditions.

In light of the AGP finding that school capacity in all clusters is adequate to support additional residential development, evidence that the unit types proposed in this case may attract fewer school-age children than MCPS estimates, and the strong evidence that the proposed development will serve the larger public interest, the District Council considers the evidence of potential adverse effects on school overcrowding to be insufficient to warrant denial of the requested rezoning.

The evidence overwhelmingly supports a conclusion that the proposed development will serve the public interest. The importance of the subject property as a historic site is recognized at the national and county levels. The County has had extensive involvement, over the course of many years, in finding a way to preserve and restore this historic district as a national treasure. The Applicants have succeeded in designing a plan that will achieve that goal while bringing the neighborhood infrastructure improvements and a compatible residential community. The Applicant presented numerous expert witnesses who echoed Technical Staff's conclusion that the proposed reclassification and development would be in the public interest. Taken together, these professional opinions represent persuasive evidence that the public interest will be served by granting the present application.

Accordingly, having carefully weighed the totality of the evidence, the District Council concludes that approval of the requested zoning reclassifications is in the public interest.

For these reasons and because to approve the instant zoning application would aid in the accomplishment of a coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District, the application will be approved in the manner set forth below.




**ACTION**

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District located in Montgomery County, Maryland approves the following resolution:

Zoning Application No. G-828, requesting reclassification from the R-90 Zone to the PD-15 Zone of 31.78821 acres of land in the 13<sup>th</sup> Election District, is hereby granted in the amount requested and the Development Plan submitted therewith is approved, subject to the specifications of the Land Use Plan, Exhibit 68(a), which forms its central component, provided, however, that within ten days of receipt of the District Council's approval resolution, the Applicants must submit a reproducible original and three copies of the approved Land Use Plan, Exhibit 68(a), for certification in accordance with § 59-D-1.64 of the Zoning Ordinance.

This is a correct copy of Council action.

  
Elda M. Dodson, CMC  
Acting Clerk of the Council